GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute : Industrial dispute between the Workmen and the Management of M/s. Kapeel Cinema, 1660, Ramling Khind, Belgaum.

Award of the Presiding Officer Labour Court, Hubli, Published.

Read the following papers :

1. Letter No. LCH-1192/78-79 dated 6-1-79 from Sri H. L. Narayana Gowda, Presiding Officer Labour Court, Hubli.

BEFORE THE LABOUR COURT AT HUBLI

Ref. No. 250/77

Present : Sri H. L. Narayanagowda, B.A., LL.B. Presiding Officer.
Date : 6-1-1979.

Claimant : Sri Mohammed Sadiq Khan, Booking Clerk, 337, Smashan Road, Anandwadi, Belgaum.
(By Sri M. D. Shaik Advocate)

Respondent : The Management of M/s. Kapeel Cinema, 1660, Ramling Khind, Belgaum.
(By Sri R. R. Telcherikar)

G.O. No. SWL 698(ii) LLD 77 dated 15-10-1977

Judgement and Award

The Government of Karnataka have made this reference under clause (c) of Sub-section (1) of Sec. 10 of the I.D. Act 1947 (Central Act XIV of 1947) referring the dispute between Sri Mohammad Sadiq Khan, and the Management of M/s. Kapeel Cinema, Belgaum, to this Court for adjudication on the following points.

"I. Is the Management of M/s. Kapeel Cinema, 1660, Ramaling Khind, Belgaum is justified in refusing employment to Sri Mohammad Sadiq Khan with effect from 14-12-1976 ?

II. If not, to what relief the said workman is entitled to?"

2. The claimant in his claim statement states as follows :

The claimant is the *bonafide* permanent employee of the opponent and he has been serving with the Management as a booking clerk since 20-9-74 on the salary of Rs. 174/- p.m. The services of the claimant has been abruptly terminated by publishing it in the Tarun Bharat daily news paper dated 14-12-1976 without any reasons whatsoever. No notice has been sent to the claimant. The termination of the claimant is illegal and against the principles of natural justice. The claimant took the matter to the Labour and conciliation Officer, Belgaum where the management has admitted for the reinstatement of the service of the claimant but did not act upon it and refused to reinstate him. Hence the matter is taken to this Court. He claims that he is a *bonafide* employee of the Management and his services are illegally terminated. Hence, the claimant is entitled for reinstatement in the said post and back wages from the date of termination of the service with continuity of service, overtime pay and other consequential benefits.

2. In the written statement the Respondent pleads as follows :

The claimant has not submitted his claim statement before this Court and respondent is not in a position to file his objections to the claim statement. Hence the Respondent kindly be permitted to file his further objections after submission of the claim statement by the claimant. The above dispute which has been referred to this Court by the Government of Karnataka is bad in law since there is no dispute existing between the claimant and respondent, and as such the above referred matter will not fall in the ambit of the Management and workman correspondence, there being no demand on the Respondent by the workman. Hence there is no dispute existing between the claimant and the Respondent. The Respondent further respectfully beg to submit that the claimant without approaching the Respondent, approached the Concilation Officer Belgaum through his petition date 3-1-1977, demanding his reinstatement or retrechment compensation, etc. Hence there was no dispute existing between the claimant and the Respondent. Therefore, the matter referred to this Court

by the Government is not maintainable. The claimant has not been terminated from service as alleged in the petition date 3-1-1977. The Respondent has requested the claimant before the Concilation Officer, to report for duties immediately. Despite of this offer by the Respondent, the claimant has failed to attend the duties. The, Respondent has not terminated the services of the claimant as alleged in his petition referred to above. He himself has failed to attend his duties with effect from 1-10-1976. Therefore above act of the claimant is amounts to abandonment of service. The Respondent respectfully beg to submit that the claimant, has taken a sum of Rs. 1,254-60 (Rs. One thousand two hundred fifty four and sixty paise only) as an advance from the respondent on the condition that same will be recovered from his monthly salary in easy instalments as required by the Payment of Wages Act 1936, and Rules thereunder. The above advance can be recovered only if the claimant is continues to be in service. But the respondent is unable to recover the such a huge amount of advance of Rs. 1,254-60 from the claimant due to his abandonment of service. The claimant was having some credit dealings with the business Magnates at Belgaum and he had taken some materials from them on credit basis. The parties started approaching the claimant and also started coming to the thereafter demanding their dues. Just to escape from the clutches of the creditors, the claimant voluntarily remained absent from work without any valid and legal reasons w.e.f. 1-10-1976.' It is true that the respondent have given an advertisement in the local Tarun Bharat daily which was published on 14-12-1976 and informed therein to the general public that, their employee (claimant) Shri Mohammad Sadiq Khan is not attending his duties in their theatre and the Management (Respondent) is no way responsible for the business dealings with the claimant, since he was transacting on behalf of the Respondent without any authorisation to that effect. When the Respondent came to know this fact, they were forced to issue an warning to the public as well as business magnates in the interest of theatre and as well as in the interest of general public. The claimant has neither terminated from service nor retrenched at any time and as such he is not entitled any relief. He himself abandoned

the service without any due notice. In the circumstances as explained above the Respondent humbly prays this Court that he above reference may kindly be rejected with cost since the matter is not maintainable in law and necessary compensation may kindly be awarded.

3. In support of his case the claimant has examined himself and has closed. Ex. W-1 to W-5 are the documents filed for him. In support of its case the Respondent has examined its two partners' MW-1 and MW-6 and 4 witnesses. Ex. M-1 to M-6 are the documents filed for it.

4. I have perused the records and heard Sri M. D. Shaik learned advocate for the claimant and Sri R. R. Telecherkar learned advocate for the Respondent.

5. The claimant as WW-1 has stated that from 20-9-1974 he was working as Booking clerk in the Respondent cinema. His salary was Rs. 174 p.m. He worked for 2 years. His services were terminated from 14-12-1976. His name was declared in the newspaper and his services were terminated as per Ex. W-1(a). He was not issued any notice before his services were terminated. Even after the publication of Ex. W-1(a) he had gone to the Respondent. But the Respondent did not take him into service. He issued Ex. W-2 to the Respondent. He issued the notice Ex. W-2 calling upon the Respondent to allow him to resume his duties. But the Respondent did not take him into service. It is not true that he had contracted debts from various persons. It is not true that he is indebted to others and that is why he has not gone to the Respondent. Later on he made an application to the Labour Officer, Belgaum. Conciliation proceedings ended in failure. He prays that he may be reinstated in service with full back wages and continuity of service.

6. MW-1 one of the partner of the Respondent Cinema has stated that he is the partner of Kapeel Talkies. The claimant was working as booking clerk in their Cinema. They were paying him Rs. 174 as salary. He worked till the end of September 1976. Afterwards he did not turn up for duty. He had taken advance of Rs. 1,000 approximately from them. Ex. M-1 is the payment Register. Ex. M-1(a) is the relevant entry No. 9 relating to the claimant. Ex. M-1(b) is the entry

for the month of September 1976. On first of every month they disburse salary. Subsequently also he did not attend duties. He did not attend to his duties because he had taken advance from them and he had taken loan from others who are harassing him. They are not knowing his address. The attendance register maintained by them for the year 1976 is in the Labour Office. They have not received back the Registers.

7. MW-2 is the Labour Officer He has started that he is the Conciliation Officer at Belgaum. He held the Conciliation in this dispute on 10-6-77. Ex. M-2 is the conciliation file Ex. M-2(a) is the statement of partner of the Respondent before him. Ex. M-2 (b) is the statement of the claimant. Ex. M-2 (c) is his factual report.

8. MW-3 is one Suresh Ginde. He has stated that they have got Ginde Electricals and Ginde Radio Sales and service. He know the claimant. The claimant purchased some goods from them on 22-3-1976. He purchased the goods on credit. They used to send for collecting the amount of the bill to the Kapeel Cinema as well as to the Address given by the claimant in Mujawar Galli. He was available in Kapeel Cinema. He was not generally available in Mujawar Galli. Rs. 230 are still due from the claimant. Their man was going to the Kapeel Cinema for collecting the balance very often. On 4-3-1977 he sent the letter Ex. M-3 to the claimant. After sending Ex. M-3 he came to know that the claimant was no longer in the service of the Respondent.

9. MW-4 is one Shankar Hawal. He has stated that he know the claimant. The claimant had purchased goods from them and their sister concern known as Rajan Cloth Centre. Ex. M-4 is the copy of the bill sent to the claimant. He had gone to Kapeel Cinema to collect the dues from the claimant 5 or 6 times. Once or twice he could meet the claimant. He said that he would pay. But he did not pay. Later on he came to know that the claimant has left the service of the Respondent Cinema.

10. MW-5 is one Subhas Shahapurkar. He has stated that they have got shop under the name and style Subas Electronics. He know the claimant. He purchased a sewing

machine for Rs. 700 from them. First the claimant did not pay anything. After 6 months he paid Rs. 150. He has not paid the balance. He used to go to his house and to the Cinema for collection. He has gone to the Cinema not less than 25 times. He was unable to pay the amount. So he took back the sewing machine.

11. MW-6 is another partner of the Respondent Cinema. He has stated that on 1-10-1976 the claimant abandoned service. They have produced the attendance Register in the Labour Office. It is missing. Ex. M-6 is the pay register starting from 1-10-1976. Before the Conciliation Officer he agreed to take the claimant back in service. But he did not turn up for duty. Even now they are prepared to take into service. But they are not prepared to pay him backwages. They cannot payback wages because they have never asked him to leave the service. He has himself left service.

12. MW-6 one of the Partners of the Respondent Cinema has categorically stated that the Respondent is prepared to take back the claimant back in service. But the Respondent is vehement that it is not prepared to pay him back wages. So I can safely order reinstatement of the claimant. The only question I have got to decide is with regard to the payment of back wages.

13. The case of the Respondent is that the claimant abandoned the service from 1-10-1976 and therefore he is to be blamed for abandoning the service and so he is not entitled for back wages. The case of the claimant is that the Respondent terminated his services by issuing a publication in Tarun Bharati daily newspaper Ex. W-1 as per Ex. W-1(a). He in fact went to the Respondent and demanded that he should be taken back on duty. But the Respondent refused. The point for consideration is which version is correct.

14. The claimant who was regularily receiving his pay on 1st of every month on signing the Register Ex. M-1, has not received pay for the month of September 1976. This is clear from the Payment Register Ex. M-1 as per Ex. M-1(b). I do not know why the claimant has not signed the register Ex. M-1 at Ex. M-1(b). Ex. M-1 cannot be seriously challanged. In fact the claimant has not chalbanged the evidence of MW-1

with regard to Ex. M-1. So I can safely rely upon Ex. M-1. The evidence of the claimant in crossexamination goes to show that he does not challange the genuineness of Ex. M-1. He admits in crossexamination that he has not taken pay for the month of September 1976. He admits in crossexamination that he has not taken his pay for the months of October and November 1976. I am at loss to know why the claimant who was receiving his salary regularily on 1st of every month and signing Ex. M-1 did not chose to receive his salary under Ex. M-1(b) and sign it. I do not know why he did not go to the Respondent and receive pay for the month of October and November. This circumstance goes to show that the claimant was in financial difficulties and as the creditors were pressing him for their dues, he ceased going to the Respondent Cinema.

15. Three creditors have given evidence. They are MW-3. MW-4 and MW-5. Ex MW-3 Suresh Ginde is crossexamined. He is suggested that he has not issued any notice to the claimant claiming the dues. He admits that he has not issued any notice. Merely because the witness has not issued any notice to the claimant, his evidence cannot be rejected and it cannot be said that the claimant is not due under the sum of Rs. 230/- to the witness. Ex. W-5(a) goes to show that the claimant had dealings with MW-3. Ex. W-5 is a bill book maintained in the book regular course of business. There is no reason why Ex. W-5(a) should be fabricated. It is true that the claimant has not signed Ex. W-5(a). But on that ground it cannot be rejected. It is suggested to MW-3 that the claimant has already paid the bill. He has denied it. He is suggested that he is having dealings with the Respondent Cinema. He has denied it. He has sworn in crossexamination that one Mahadev Siddannavar is his man whom he sent to the claimant to collect the dues. He has denied the suggestion that Ex. W-5(a) is a get up one.

16. It is then suggested in crossexamination of MW-2 that the concern is registered in the name of borther's wife. He admits it. But he has stated that he is looking after the shop of the Sister-in-law. He admits in crossexamination that his brother's wife has not authorised him in writing to collect dues. May be there is no writing authorising MW-3 to collect dues on behalf of his Sister-in-law. But he has stated that he is looking

after the shop of his sister-in-law and there is no reason why I should reject his evidence. Then it is suggested that in Ex. W-5(a) it is not mentioned that it is credit memo. The witness admits it. The dealers issue bills. They are not expected to issue credit memo separately. On reading the evidence of MW-3 as a whole, I am satisfied that the claimant is due to the witness MW-3 in a sum of Rs. 230/- and when MW-3 was sending his servant Mahadev Siddannavar for collection. So it is established that MW-3 was one of the creditor of the claimant.

17. Coming to the evidence of MW-4 another creditor he admits in crossexamination that the claimant had purchased one screw driver whose cost of Rs. 5/- and he had purchased 2 tubelights costing Rs. 30/- and one Choke costing Rs. 20/- Ex. M-4 is produced and it goes to show that the claimant was due in the sum of Rs. 55/- towards Electrical goods and Rs. 78- towards cloth bill. It is suggested in crossexamination of MW-4 that he has not taken signature of the claimant to Ex. M-4 or to his Accouts books. May be MW-4 has not taken signature of the claimant to his accounts books, but on that ground I cannot reject the evidence of MW-4. In my opinion, MW-4 is not fabricated. If it was fabricated he would not have mentioned Rs. 55/- towards one item and Rs. 78/- towards another item and would not have given evidence about the one item only. In my opinion the evidence of MW-4 must be accepted. That goes to show that MW-4 was another creditor of the claimant who was pressing for his dues.

18. The another creditor of the claimant is MW-5. He has stated that the claimant has purchased a sewing machine for Rs. 700/- from them and the claimant has paid Rs. 150-. He also admits that as the claimant did not pay the balance, he took away the sewing machine. But any how it goes to show that the claimant in indebeted to MW-5 also.

19. The evidence of MW-3, MW-4 and MW-5 establishes that these creditors were pressing the claimant for their dues. It seems to me that because the creditors were pressing, the claimant ceased to going to the Respondent Cinema. That is why he has not received his salary for the month of September, October and November 1976. It is to be noted that the claimant in his evidence in crossexamination admits that the Respondent

was satisfied with his work for 2 years. So the Respondent who was satisfied with the work of the claimant should become vendective all of a sudden. It is not explained by the claimant. The claimant in crossexamination states that it is true that he cannot say why he did not take his salary for the month of September, October and November 1976.

20. Sri M. D. Shaik for the claimant relied upon Ex. W-1(a) the publication in Tarun Bharat by the Respondent and submits that under Ex. W-1(a) the Respondent has terminated the services of the claimant. I cannot agree. Under Ex. W-1(a) it is stated that all public are informed that Sri Mohammed Sadiq Khan is not in their service. Therefore nobody should have any transaction with him. Inspite of this if any transaction is taken, the Management will not be held responsible. The Management have issued Ex. W-1(a) a publication only to safeguard their interest. It is not issued for the purpose of terminating his services. Ex. W-1(a) does not say that the services of the claimant are terminated by the Respondent. It cannot be interpreted that it amounts to termination simpliciter. So Sri Shaikh cannot rely on Ex. W-1(a) and cannot urge successfully that under Ex. W-1(a) the Respondent has terminated the services of the claimant. So this is a clear case of abandonment of service on the part of the claimant and not a case of termination. The claimant has to thank himself for not attending to his duties regularly and not receiving his pay regularly. Under these circumstances I cannot direct the Respondent to pay back wages to the claimant.

21. In the result, the reference succeeds and is allowed in part. I order that the Respondent should reinstate the claimant immediately. With regards to the back wages, for the reasons stated by me above, the back wages are not granted. Continuity of service is allowed. No costs.

(Dictated to the Stenographer, transcribed and typed by him and corrected by me).

H. L. NARAYANA GOWDA,
Presiding Officer,
Labour Court, Hubli.

Place : Hubli
Date : 6-1-1979